



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARK AND SUSAN GUIDOTTI )

For Appellants: Mark Guidotti,  
in pro. per.

For Respondent: Lazaro L. Bobiles  
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Mark and Susan Guidotti against a proposed assessment of additional personal income tax in the amount of \$120.00 for the year 1980.

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The sole question presented by this appeal is whether respondent properly disallowed appellants' claimed deduction for a contribution to an individual retirement account (IRA) for the year 1980.

Appellant-husband was employed by Intel Corporation (Intel) until December 12, 1980, and accrued benefits under his employer's qualified pension plan from January, 1980 until he terminated his employment. In order to obtain vested rights under Intel's pension plan, and to become entitled to any benefits thereunder, an employee is required to be employed for a period of five years; appellant-husband had not worked the requisite period as of December 12, 1980. He was entitled, however, to the reinstatement of previously accrued benefits if he was later re-employed by Intel,, provided that such re-employment took place within the time period provided by the break-in-service provision of the plan, in this case, one year.

On their joint California personal income tax return for 1980, appellants deducted \$1,500 for a contribution to an IRA. Upon review of their return, respondent disallowed the claimed deduction on the basis that appellant-husband has been an active participant in Intel's qualified pension plan for a portion of the appeal year. Appellants' protest of respondent's action has resulted in this appeal.

Revenue and Taxation Code section 17240, subdivision (b)(2)(A)(i), provides that no deduction for contributions to an IRA will be allowed for a taxable year to any individual who was an "active participant" in -a qualified pension plan under Revenue and Taxation Code section 17501 for any part of such year. T h e s e sections are substantively identical to former section 219(b)(2)(A)(i) and section 401(a), respectively, of the Internal Revenue Code of 1954. Accordingly, federal case law is highly persuasive in interpreting the California statutes. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

The question raised by this appeal has previously been addressed by the courts and this board. (see, e.g., Richard W. Orzechowski, 69 T.C. 750 (1978), affd., 592 F.2d 677 (2d Cir. 1979); Frederick A. Chapman, 77 T.C. 477 (1981); Appeal of Ramakrishna and Saraswathi Narayanaswami, Cal. St. Bd. of Equal., July 29, 1981.) The cited authority stands for the Proposition-that an individual is considered an active participant if he is

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accruing benefits under a qualified pension plan, even though he has only forfeitable rights to plan benefits and such benefits are in fact forfeited by termination of employment before any rights become vested. The fact that appellant-husband forfeited his benefits under his employer's plan is of no consequence; the relevant factor is that he was an "active participant" in his employer's plan during 1980. (Frederick A. Chapman, supra; Appeal of Ramakrishna and Saraswathi Narayanaswami, supra.) --

We have considered the recent opinion in Foulkes v. Commissioner, 638 F.2d 1105 (7th Cir. 1981), and believe it is clearly distinguishable from the instant appeal. In that case, the taxpayer terminated his employment in May 1975 and forfeited his rights to benefits under his employer's qualified pension plan. Moreover, it was conceded in that case that the break-in-service rules of section 411(a)(6) of the Internal Revenue Code did not apply to the taxpayer under the pension plan, i.e., he would receive no credit under the plan for past service were he to return to his former employment. Stressing that the congressional purpose in enacting the "active participant" limitation was to prevent the potential for a double tax benefit,<sup>1/</sup> the Court of Appeals concluded under the facts of that case, that as of the end of the taxable year 1975, the taxpayer had no potential for a double tax benefit and therefore was not an "active participant" in a qualified plan in 1975 within the limitation of former Internal Revenue Code section 219(b)(2) (A)(i).

As previously indicated, appellant-husband was entitled to a reinstatement of previously accrued benefits had he returned to his previous employment within the time period provided in the break-in-service provisions of his employer's pension plan. Therefore, contrary to the factual situation in Foulkes, supra, the potential for a double tax benefit did exist as of the end of 1980.

<sup>1/</sup> The double tax benefit which Congress sought to preclude was the potential for an individual to obtain the tax benefit provided by being a participant in a qualified plan, as well as the tax benefit provided to those making contributions to an IRA. (M.R. Rep. No. 93-807, 93d. Cong., 2d Sess. (1974) [1974 U.S. Code Cong. & Ad. News, pp. 4670, 4794].)

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On the basis of the record of this appeal, we must conclude that appellant-husband was an "active participant" in a qualified plan in 1980 within the meaning of the statutory limitation of Revenue and Taxation Code section 17240, subdivision (b)(Z)(A)(i). Consequently, appellants were not entitled to a deduction for a contribution to an IRA for that year.

For the reasons set forth above, respondent's action in this matter will be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Mark and Susan Guidotti against a proposed assessment of additional personal income tax in the amount of \$120.00 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this **28th** day of July , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman  
Conway H. Collis , Member  
Ernest J. Dronenburg, Jr. , Member  
Richard Nevins , Member  
Walter Harvey\* ----- , Member

\*For Kenneth Cory, per Government Code section 7.9.